
Betty Montgomery Auditor of State

Bulletin 2004-007

Date Issued: June 15, 2004

TO: All County Auditors
All County Law Library Associations
All Independent Public Accountants

FROM: Betty Montgomery
Ohio Auditor of State

SUBJECT: Law Library Associations

The Auditor of State's Office (AOS) is issuing this Bulletin in response to questions raised by Law Library Associations (LLAs) regarding various auditing issues. Specifically, this Bulletin addresses the LLAs' proper use of public and private funds, accounting issues related to those funds, and annual report requirements. Ultimately, this Bulletin should help ensure auditing practices are applied consistently to LLAs.

Proper Use of Public Funds

Pursuant to Ohio Rev. Code § 3375.50 through 3375.53, LLAs receive public funding from court fines, penalties, and forfeited bail. Such monies may be expended only for the support and operation of the LLA as detailed in Ohio Rev. Code § 3375.54. Under this provision, expenditures are generally prohibited unless they are used in support of the LLA through the purchase, lease, or rental of equipment to facilitate legal research. This provision has been strictly interpreted by the Ohio Attorney General as evidenced in the following opinions:

- Op. Atty. Gen. No. 86-102 (remodeling of a courtroom for the court of common pleas is an improper expenditure);
- Op. Atty. Gen. No. 89-068 (LLAs are prohibited from making a donation to a school for maintenance of community rooms);
- Op. Atty. Gen. No. 95-029 (LLAs are prohibited from using funds received pursuant to Ohio Rev. Code § 3375.50 through 3375.53 to compensate a trustee of the LLA);
- Op. Atty. Gen. No. 98-022 (purchase of video equipment solely for taping of deposition is improper); and
- Op. Atty. Gen. No. 99-040 (operation of attorney referral service is an improper expenditure).

Additionally, an LLA is prohibited from expending court fines, penalties, and forfeited bail monies on items that are required to be provided by the county.¹ Pursuant to Ohio Rev. Code § 3375.49, the county is required to provide suitable rooms, bookcases, heating, and lighting for LLAs. The county is also required to pay the salary of a law librarian and the salaries of up to two assistants (Ohio Rev. Code § 3375.48). If an LLA pays for items the county should provide per Ohio Rev. Code § 3375.49, or pays salaries contrary to Ohio Rev. Code § 3375.48, AOS will issue Findings for Recovery against the LLA.

Retained Monies

In accordance with Ohio Rev. Code § 3375.56, an LLA is required to proportionally refund the contributing political subdivisions (e.g., municipal court) at least 90 percent of any unencumbered balance in its General Fund.² The unencumbered balance includes monies received during the preceding calendar year that exceed the sum of cash disbursements plus any year-end outstanding encumbrances, during that same period. Contributing political subdivisions include those courts that provided the LLA monies through court fines, penalties, and forfeited bail during the previous calendar year. The remainder of the balance (up to 10 percent) may be kept for future expenses should an LLA's income not meet its revenue for a particular year. An LLA does not have to include this remaining balance as income received for the following fiscal year for purposes of applying Ohio Rev. Code § 3375.56. Furthermore, this remainder forever retains its identity as *public* funds under Ohio Rev. Code § 3375.54 and can only be used for purposes detailed in that provision.³

LLAs should transfer/allocate the amount to be retained from the General Fund to a separate fund, the Retained Monies Fund. LLAs should compute the amounts to be refunded to contributing political subdivisions and the amount to be retained annually. See the attachment for sample calculations on how to apply Ohio Rev. Code § 3375.56.

Interest Earned on Public Funds

Interest earned on public funds collected under Ohio Rev. Code § 3375.50 through 3375.53 (i.e., monies received from court fines, penalties, and forfeited bail), and interest earned on retained monies under Ohio Rev. Code § 3375.56 will be treated as public funds and both are subject to the same restrictions under Ohio Rev. Code §

¹ See 1985 Op. Atty. Gen. No. 85-030 which prohibits LLAs from purchasing book cases with fine and forfeiture monies, as they are to be provided by the county per Ohio Rev. Code § 3375.49.

² For purposes of this Bulletin, *General Fund* is the main fund used by the LLA to account for receipts pursuant to Ohio Rev. Code § 3375.50 through 3375.53 and disbursed in accordance with Ohio Rev. Code § 3375.54.

³ See *Greene County Law Library Association v. Ferguson*, No. CA 1139 (Ct. App. Greene County Dec. 24, 1980) (unreported).

3375.54. All interest earned on public funds shall be credited to the Retained Monies Fund, thus not subject to the distribution as prescribed by Ohio Rev. Code § 3375.56, which requires an LLA to proportionally refund the contributing political subdivision at least 90 percent of any unencumbered balance in its General Fund.

Proper Use of Private Funds

LLAs also receive income from private sources such as contributions, private donations, fees, and membership dues. Private funds also include revenue collected from the use of books, copiers, and other equipment that was originally purchased with public funds to facilitate legal research per Ohio Rev. Code § 3375.54. An LLA may use private funds received for any proper purpose of the association, even though an LLA is prohibited from expending public funds for such purposes.⁴ For example, an LLA may use private funds to supplement the salary of a law librarian; however, public funds (i.e., monies received from court fines, penalties, and forfeited bail) may not be used for such purposes.

Accounting for Public and Private Funds

The Auditor of State has the authority under Ohio Rev. Code § 117.10 to audit all public offices and private associations that receive public money. Because LLAs are either private associations or nonprofit corporations that receive certain private contributions and revenue, the Auditor of State will limit its review to public funds received under Ohio Rev. Code § 3375.50 through 3375.53 and those retained under Ohio Rev. Code § 3375.56. Because there are different rules and auditing treatments associated with public versus private funds, LLAs should segregate private revenues and expenditures from public revenue and expenditures. Commingled public and private funds will require AOS to audit the entire fund. If they are segregated, AOS will only audit the public funds, unless requested to do otherwise.

An LLA that has not segregated these funds can avoid an audit of both public and private funds, if it can establish, through documentation, which funds are private and which are public. If, however, such documentation is not available, an LLA can pass a one-time resolution identifying the nature of the fund balances for purposes of this audit as either public, private, or retained (e.g., membership dues). This one-time resolution will allow AOS to test this designation for accuracy. Thereafter, however, for future auditing purposes, segregation or documented identification must be done.

In summary, failure to account for public and private funds in this fashion will cause AOS to audit all commingled revenues and expenditures (public and private) together in accordance with the rules and restrictions on public revenues and expenditures

⁴ See *Van Wert County Law Library Association v. Stuckey*, 94 N.E.2d 32, 45 (C.P. Van Wert County 1949).

noted above. AOS will audit in accordance with the restrictions and code requirements noted throughout this Bulletin.

Filing the Annual Report

LLAs are required to file an annual report with the Auditor of State within sixty (60) days after the close of the calendar year, per Ohio Rev. Code § 117.10. Since the Auditor of State does not prescribe a particular format for the annual report, LLAs shall file an annual report using the same format used to summarize and report their annual financial activities to their respective board of trustees and county auditor. LLAs are responsible for submitting the annual report to the Auditor of State. An annual report provided to AOS staff during the audit process does not satisfy the submission requirement. Rather, an LLA should retain one copy of the annual report and should submit one copy to the following address:

Auditor of State Betty Montgomery
Attn: Local Government Services (LGS) Section
88 East Broad Street - 6th Floor
P.O. Box 1140
Columbus, OH 43216-1140

Reports submitted to the Auditor of State to satisfy the statutory filing requirement are not required to be audited.

Publication Notice

When an LLA submits its annual report to the Auditor of State, a notice should be published in a newspaper of general circulation in the county of the LLA. The notice shall state that the annual report has been completed by the LLA and is available for public inspection at the office of the LLA. See Auditor of State Bulletin 2001-12 for additional information.

Questions

Accounting questions about this Bulletin may be directed to AOS's Accounting & Auditing Support Section at (800) 282-0370. Legal questions about this Bulletin should be directed to AOS's Legal Division at (614) 752-8683.

A handwritten signature in black ink that reads "Betty Montgomery". The signature is written in a cursive, flowing style.

Betty Montgomery
Ohio Auditor of State

ATTACHMENT

Sample Calculations of Refund to Relative Income Sources and Retained Monies (Ohio Rev. Code § 3375.56)

Ohio Rev. Code § 3375.56 requires LLAs to proportionally refund relative income sources (i.e., the contributing political subdivisions) at least 90 percent of any unencumbered balance in the General Fund. The unencumbered balance includes monies received during the preceding calendar year that exceed cash disbursements plus any year-end outstanding encumbrances during that same period.

In calculating the excess of current revenues over current expenditures, consideration must be given to the impact encumbrances have on the calculation. Current year expenditures need to be reduced by the amount of encumbrances outstanding from the prior year. Correspondingly, the current year expenditures need to be increased to include encumbrances outstanding at year end. The amount recorded as current year expenditures relate only to current year revenues; therefore, expenditures do not include any refund to relative income sources. Additionally, current year expenditures do not include any remittance to the Retained Monies Fund.

The scenarios presented below illustrate the impact encumbrances have on unencumbered balances and on the excess to be distributed. Assume the LLA received revenues of \$100,000 from courts and expended the amounts indicated below in accordance with Ohio Rev. Code § 3375.54. (Therefore, any amounts remitted to relative income sources or any amount retained by the LLA has been excluded from the expended amounts illustrated below.) For purposes of this illustration, prior year carryover balances have not been illustrated, since these balances should not be factored into the calculation.⁵

Assume the LLA has the following encumbrances outstanding at year end:

Year End Date	Year End Outstanding Encumbrances
12/31/2001	\$0
12/31/2002	40,000
12/31/2003	20,000
12/31/2004	5,000

⁵ This, of course, assumes the proper application of Ohio Rev. Code §3375.56 in prior years and any retained amounts have been accounted for in a separate Retained Monies Fund.

		Calculations	Current Year Amounts
2001	Revenue		\$100,000
	Expenditures		100,000
	Unencumbered Balance		0
	Excess to be Distributed		0

For 2001 the calculation illustrates expenditures of \$100,000 are directly related to the revenues of 2001, since beginning and ending encumbrances are \$0.

2002	Revenue		\$100,000
	Expenditures	60,000 + 40,000	100,000
	Unencumbered Balance		0
	Excess to be Distributed		0

For 2002 the calculation illustrates expenditures of \$100,000 (\$60,000 + \$40,000) are directly related to the revenues of 2002, since beginning encumbrances are \$0 and ending encumbrances equal \$40,000.

2003	Revenue		\$100,000
	Expenditures	100,000 - 40,000 + 20,000	80,000
	Unencumbered Balance		20,000
	Excess to be Distributed		20,000
	Refund to Relative Sources	20,000 * 90%	18,000
	Remittance to Retained Monies Fund	20,000 * 10%	2,000

For 2003 the calculation illustrates expenditures of \$80,000 (\$100,000 - 40,000 + 20,000) are directly related to the revenues of 2003, since beginning encumbrances equal \$40,000 (2002's ending encumbrances) and ending encumbrances equal \$20,000.

		Calculations	Current Year Amounts
2004	Revenue		\$100,000
	Expenditures	100,000 - 20,000 + 5,000	85,000
	Unencumbered Balance		15,000
	Excess to be Distributed		15,000
	Refund to Relative Sources	15,000 * 90%	13,500
	Remittance to Retained Monies Fund	15,000 * 10%	1,500

For 2004 the calculation illustrates expenditures of \$85,000 ($\$100,000 - 20,000 + 5,000$) are directly related to the revenues of 2004, since beginning encumbrances equal \$20,000 (2003's ending encumbrances) and ending encumbrances equal \$5,000.